IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

REVIEW PETITION NO.17 OF 2005

IN

WRIT PETITION NO.5455 OF 2002

Pune Municipal Corporation. ...Petitioner.

Versus

Padma Sahakari Grah Sanstha Maryadit,
a Co-operative Housing Society & Ors. ...Respondents.

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Mr. R.G. Ketkar for the Petitioner.
Ms.Kiran Bhagalia with Ms.Lalita Panchakshari for the Respondents.

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CORAM : A.P. SHAH AND

DR. D.Y. CHANDRACHUD, JJ.

April 21, 2005.

P.C.:

Admit.

2. The Petition is taken up for hearing and final disposal with

the consent of all the Learned Counsel.

3. The Pune Municipal Corporation has instituted this Review Petition in respect of an order passed by this Court on 4th July 2003. The First Respondent is a Co-operative Housing Society and is the owner of land bearing Survey No.6, Hissa Nos.11 and 12 at Dhankawadi, Pune. The first development plan for the City of Pune was sanctioned by the State Government on 7th July 1966 and came into effect from 15th August 1966. Survey Nos.4 to 6, 9 and 10 of Dhankawadi were included in the Residential Zone. A Draft Revised Development Plan was published on 18th September 1982 wherein these Survey numbers were shown in the Hill Top – Hill Slope Zone. While considering the suggestions and objections which were received pursuant to the publication of the Draft Revised Development Plan, it was noticed that many Housing Societies with middle class membership had purchased plots from these survey numbers before 18th September 1982. While sanctioning the Development Plan on 5th January 1987, Note 12 was included by the

State Government in Table 27 of the Development Plan which reads as follows :

> "Note: 12 In S. No.4 to 6, 9 and 10 of Dhankawadi, which were included in Hill top zone as per the published plan and now included in Residential zone, the development permission shall be allowed with F. A. R. of 0.33 and Ground floor structures only subject to condition that double the number of trees than prescribed in Appendix 'D' of Development Control Rules are planted. No occupation certificate shall be granted without actual verification of the same on the plot."

4. The First Respondent to the Review Petition, instituted proceedings under Article 226 of the Constitution, seeking a declaration that the restriction imposed on their plot of allowing an F. S. I. of 33% was discriminatory and unlawful and that the Municipal Corporation, Director of Town Planning and Government of Maharashtra who were Respondents to the Petition be directed to allow an FSI of one on the property.

5. The Petition came up for hearing on 4th July 2003. A statement was made before the Court by Counsel appearing on

behalf of the Municipal Corporation which was recorded in the following terms:

> "Mr.Ketkar fairly stated that the restriction was placed in respect of the Petitioner's land since at the relevant time the Corporation was unable to supply water to the Petitioner's land. He pointed out that the position is now changed and the Corporation is in a position to supply water to the said plots. He stated that the Corporation will prepare necessary proposal for deleting the above condition from the development plan and forward the same to the State Government for necessary action."

This statement forms the basis of the order of this Court for, in view of that statement, this Court accordingly directed the Municipal Corporation to take steps for deletion of the condition imposed in Note 12 of Table 27 by forwarding the proposal to the State Government. The State Government was directed to consider the proposal and to pass appropriate orders within a period of eight weeks from the receipt thereof.

6. In support of the Review Petition, the entire background relating to the sanction of the Development Plan of 18th September

1982 has been adverted to. It has been stated that Survey Nos.4 to 6, 9 and 10 of Dhankawadi were shown in the Hill Top – Hill Slope Zone. However, the State Government found while considering the suggestions and objections received upon the publication of the Draft Development Plan that several Housing Societies of middle class persons have purchased plots in these survey numbers. Hence, keeping this aspect in mind, Note 12 in Table 27 was included in the said proposal while sanctioning the plan dated 5th January 1987. It has further been urged in the Review Petition that the adjacent part of Parvati area which is at the same level as Survey Nos.4 to 6, 9 and 10 of Dhankawadi was included in the Residential Zone in the Development Plan sanctioned on 15th August 1966. Subsequently in the Draft Development Plan published on 18th September 1982, it was included in the Hill Top – Hill Slope Zone and it continues to be in the same Zone of the sanctioned Development Plan dated 5th January 1987. It has been urged that having regard to this position, Survey Nos.4 to 6, 9 and 10 could have also been shown in the Hill Top – Hill Slope Zone in the sanctioned development plan of 5th January

1987, but having regard to the middle class membership of several Housing Societies, the State Government included these Survey numbers in the Residential Zone with Note 12 in Table 27 restricting FSI to 33%. It has been stated in the Review Petition that insertion of Note 12 in Table 27 was not on account of the inability of the Municipal Corporation to supply water to these Survey Numbers. The Court has been requested to review its order dated 4th July 2003 having regard to the importance of maintaining the Hill Top – Hill Slope Zone as a "fresh air pocket". It has been stated that when the Corporation published a Draft Development Plan on 31st December 2002 in respect of the area which was additionally included in the Municipal limits in 1997, thousands of objections were received and more than 80% thereof were to the conversion of the Hill Top – Hill Slope Zone into a Residential Zone. Hence, it is submitted that the Municipal Corporation was not inclined to initiate proceedings under Section 37 of the Maharashtra Regional and Town Planning Act, 1966. A proposal is stated to be under consideration of the Municipal Corporation for initiating proceedings under Section 37 in respect of

areas having a gradient of 1:5 which are included in the Residential Zone in the development plan sanctioned on 5th January 1987 and for converting such areas into a Hill Top -Hill Slope Zone.

7. In pursuance of directions issued by this Court on 21st March 2005, the Municipal Commissioner of the Pune Municipal Corporation has filed an additional affidavit dated 13th April 2005.

8. The order of this Court dated 4th July 2003 has proceeded on the basis of a statement made by Counsel appearing on behalf of the Municipal Corporation to the effect that the restriction that was placed in respect of the land belonging to the First Respondent (the original Petitioner in the Writ Petition) was because the Municipal Corporation was unable to supply water at the relevant time to the land. The statement was, that the position has since changed and the Municipal Corporation was in a position to supply water to the said plot and that accordingly, the Corporation would prepare a proposal for deleting the restriction imposed in respect of the development of

the plot belonging to the First Respondent herein. Material has now been placed before the Court to demonstrate that the statement which was made before the Court by Counsel is not reflective of the correct position in regard to the reason as to why a restriction was imposed in respect of the land belonging to the First Respondent, amongst other survey numbers. We are of the view, having regard to the contents of the Review Petition and the additional affidavit which has been filed by the Municipal Commissioner on 13th April 2005, that the issues which arise in the petition need to be considered and that it is not appropriate to dispose of the petition in terms of the statement of Counsel, particularly since the statement is not reflective of the correct position.

9. In the circumstances, we allow this petition and recall our order dated 4th July 2003. The Petition shall now be posted for admission before the appropriate Bench. The Review Petition is accordingly disposed of.

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